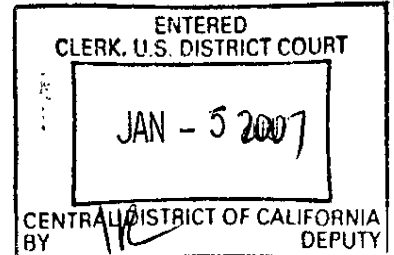
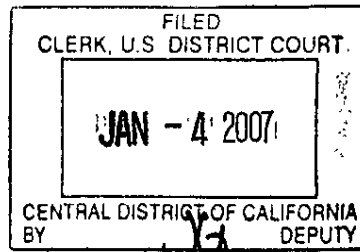


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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

11	AJA TERMINE, et al.,)	CV 02-1114 SVW (MANx)
12)	
13	Plaintiffs,)	ORDER RE TERMINE'S DISMISSAL OF
14)	REMAINING CLAIMS, FINAL
15	v.)	ACCOUNTING AND REQUEST FOR
16)	ENTRY OF FINAL JUDGMENT
17	WILLIAM S. HART UNION HIGH)	[209]
18	SCHOOL DISTRICT and WESTMARK)	
19	SCHOOL,)	
20)	
21	Defendants.)	
22)	
23	AND RELATED JOINED CASES)	THIS CONSTITUTES NOTICE OF ENTRY
24)	AS REQUIRED BY FRCP, RULE 77(d).

I. INTRODUCTION

This case involved a dispute between Plaintiff Aja Termine ("Aja"), her mother Karen Termine (collectively "Plaintiffs") and Defendant William S. Hart Union High School District ("Defendant") over Aja's educational placements under the Individuals with Disabilities Education Act ("IDEA"). The dispute began when Aja transferred into the Hart School District in the fall of 2001. On December 27, 2001, Plaintiffs filed for an administrative due process hearing before the California Special Education Hearing Office ("SEHO"). Plaintiffs requested that the SEHO issue a "stay-put"

1 order which would allow Aja to remain in her current placement until
2 the dispute was resolved. However, SEHO denied the stay-put order.
3 Plaintiffs then sought a judicial determination by this Court as to
4 what was the appropriate "stay-put" placement for Aja.

5 On June 24, 2005, this Court entered judgment in favor of
6 Plaintiffs. Plaintiffs subsequently moved for attorneys' fees
7 pursuant to the IDEA under 20 U.S.C. § 1415(i)(3)(B). On January 13,
8 2006, this Court issued an order that in large part granted the
9 requested fees ("January Order"). However, in considering
10 Defendant's arguments that a reduction might be appropriate for
11 specified fees, this Court requested further accounting from the
12 Defendant before issuing a final decision regarding those fees.

13 In an August 4, 2006 order, this Court considered the further
14 accounting by Defendant and granted its request that the requested
15 fee award be "reduced by (1) the fees incurred in connection with the
16 Westmark settlement; and (2) the fees sought by Plaintiffs that were
17 incurred on or after January 24, 2004. The Court [also denied]
18 Plaintiffs' motion for fees as it pertains to expert fees." (Order
19 August 7, 2006 at 12.)

20 On October 27, 2006, Plaintiffs filed a requested fee award,
21 purportedly reflecting the Court ordered reductions. On November 7,
22 2006, Defendant filed its objections to the revised request for fees.
23 Defendants object to Plaintiffs' use of compound interest, as opposed
24 to simple interest, in calculating their final requested award.
25 (Def.'s Obj. at 1.) Defendants also contend that the requested fees
26 are "grossly exaggerated" because Plaintiffs employed the current
27 (and highest) prime rate of 8.25% ("Current Prime"), as opposed to
28

1 the "historical prime rates" [("Historical Prime")] which ranged from
2 4% in 2002 to the current interest rate of 8.25%. (Id.)

3 Additionally, Defendant objects to the \$15,000 in fees for
4 work performed after the Court took this matter under
5 submission. Defendant objects to such fees "because (a) the
6 Termes should not be awarded fees for the fee accounting
7 [because it] contains irregularities [the use of the current
8 prime rate and compound interest], and (b) the Termes'
9 invoice reflects no deduction for fees incurred in arguments
10 they submitted on the availability of expert fees [which this
11 Court eventually denied]. (Id.)¹

12 13 **II. DISCUSSION**

14 **A. Use of Compound As Opposed to Simple Interest**

15 In objecting to Plaintiffs' use of compound interest to
16 calculate its final fee award, Defendant does not cite any law
17 for the proposition that simple interest is the proper or
18 preferred measure in such calculations. Research of the issue
19 generally reveals that compound interest is the correct
20 standard, as it more fully compensates the negatively impacted
21 party for the delay in payment. See Am. Nat'l Fire Ins. Co. v.

22
23 ¹ Defendant also "objects on foundational grounds," arguing that
24 Plaintiffs "failed to proffer any declaration laying a foundation for
25 their spreadsheets submitted in support of their fee claim." The
26 Court notes that Plaintiffs have attached the declaration of Marcy
27 Tiffany to their response to Defendant's objections. The declaration
28 lays a proper foundation for the spreadsheets. Defendant "reserve[d]
the right" to submit further objection to Plaintiffs' calculations,
filed on November 21, 2006, but has not done so to date. Thus,
Defendant's objection on this ground is overruled.

1 Yellow Freight Sys., 325 F.3d 924, 937-38 (7th Cir. 2003) ("As a
2 general rule, the decision whether to award compound or simple
3 prejudgment interest is left to the discretion of the trial
4 court ... [However,] compound prejudgment interest is the norm
5 in federal litigation") (internal citations omitted); Evans v.
6 City of Chicago, 1996 U.S. Dist. LEXIS 18388, at *13 (D. Ill.
7 December 10, 1996) ("To put plaintiffs' attorneys in the
8 position they would have occupied but for the delay, we must
9 compound the interest"); cf. 28 U.S.C. § 1961 (b) (post judgment
10 interest "shall be computed daily ... and shall be compounded
11 annually"). In light of the foregoing authority, the Court
12 finds Plaintiffs' use of compound interest proper. Thus,
13 Defendant's objection on this matter is overruled.

14 B. Use of the Historical as Opposed to the Current Prime
15 Rate

16 Defendant next argues that Plaintiffs' attorneys "grossly
17 exaggerated" their fees by using the current prime interest
18 rate of 8.25%, as opposed to the variable historical rates.
19 Again, Defendant does not cite any law in support of its
20 objection. Nonetheless, the Court believes that the use of the
21 historical prime rates (when the district court chooses to
22 award the historical rates with a prime rate enhancement) is
23 the preferable approach because it more closely "put[s]
24 plaintiffs' attorneys in the position they would have occupied
25 but for the delay." Evans, 1996 U.S. Dist. LEXIS 18388 at *13.
26 Under this approach, Plaintiffs' lawyers would not only recover
27 their agreed upon fees, but an amount that is enhanced by
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1 compounding interest based (initially) on the prime rate at the
2 time those fees were first incurred.

3 Thus, counsel would recover a quantity of fees enhanced to
4 reflect the legal interest those monies would have generated
5 were they timely paid. This approach fully compensates counsel
6 without permitting a windfall by using the current prime rate
7 as to all fees incurred.

8 Additionally, this computation would assure counsel the
9 recovery of their "market rates" throughout the litigation. See
10 Anderson v. Director, Office of Workers Compensation Programs,
11 91 F.3d 1322, 1324 (9th Cir. 1996) ("The [Supreme] Court
12 reasoned that attorneys' fees 'are to be based on market rates'
13 and such rates are based on the assumption that bills will be
14 paid reasonably promptly; delays in payment thus deprive
15 successful litigants of the market rates.") (quoting Missouri v.
16 Jenkins, 491 U.S. 274, 284 (1989)). Again, this computation
17 (using the historical prime rates) more accurately mimics the
18 "market rates" of the attorneys' fees than the use of the
19 current prime rate.

20 Lastly, while clear legal authority on this issue is
21 scant, the few cases that have spoken on the issue support the
22 Court's position. See In re Oil Spill by The Amoco Cadiz, 954
23 F.2d 1279, 1333 (7th Cir. 1992) ("[I]t is necessary to use the
24 rates in force during the case and not whatever rate prevails
25 at the end"); Shakman v. Democratic Org., 844 F. Supp. 422, 426
26 (D. Ill. 1994) ("[T]he applicable [prime] rate is the market
27 rate throughout the litigation - 'when the defendant had the
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1 use of money that the court has decided belongs to the
2 plaintiff - not the going rate at the end of the case'")
3 (quoting In re Oil Spill by The Amoco Cadiz, 954 F.2d at 1332).

4 Thus, in awarding the attorneys' fees, this Court will use
5 the historic prime rate to account for the delay in payments.
6 Plaintiffs' counsel has supplied the calculations applying the
7 historical prime rate, and the Court approves their use.²

8
9 C. Fees Incurred Regarding the Instant Application

10 Defendant finally argues that plaintiffs' counsel should
11 not be awarded \$15,000 in fees for work performed after the
12 Court took this matter under submission. Defendant objects to
13 such fees "because (a) the Termines should not be awarded fees
14 for the fee accounting [because it] contains irregularities
15 [the use of the current prime rate and compound interest], and
16 (b) the Termines' invoice reflects no deduction for fees
17 incurred in arguments they submitted on the availability of
18 expert fees [which this Court eventually denied]."

19 First, the Court does not believe that the alleged
20 irregularities warrant the denial of fees for the work
21 performed on the fee accounting. Indeed, the Court cannot
22 agree that the fee accounting contains irregularities.
23 Plaintiffs' lawyers properly compounded the interest, as
24 discussed above, and their use of the current prime rate does
25 not rise to the level of an irregularity. Plaintiffs' lawyers

26 ² Defendant has also failed to file any objection to Plaintiff's
27 calculation using the historic prime rate, which this Court
28 interprets as a concession of the calculation's accuracy.

1 may have been mistaken as to the proper prime rate calculation,
2 but their actions were not surreptitious or misleading. A
3 cursory glance at the accounting documents reveals the use of
4 the current prime rate, and while the Court opts to employ the
5 historical prime rate, it will not penalize the Plaintiffs'
6 lawyers for their action.

7 Second, Defendant argues that Plaintiffs' counsel should
8 not be granted their fees in connection with the preparation of
9 the fee accounting because their "invoice reflects no deduction
10 for fees incurred in arguments they submitted on the
11 availability of expert fees," which this Court held are not
12 warranted in this case. Plaintiffs respond that a reduction in
13 fees is not warranted because the work performed in the
14 unsuccessful pursuit of expert fees is "inseparable from that
15 performed in furtherance of the successful claims." (Response
16 at 3.)


17 The Court cannot agree with Defendant's position. The
18 Court has held that Plaintiffs are the prevailing party, and
19 therefore are entitled to an award of reasonable fees expended
20 in litigating the fees motion itself. The Supreme Court has
21 recently held in Arlington Sch. Dist. Bd. of Educ. v. Murphy,
22 126 S. Ct. 2455 (2006), that Plaintiff cannot recover expert
23 fees, but this determination resolved a circuit split. It was
24 wholly reasonable for Plaintiffs to seek the recovery of such
25 expert fees in light of the then-existing circuit split. As a
26 result, the Court will not impose any reduction on the
27 approximately \$15,000 in fees expended since March 2006.
28

1 **III. CONCLUSION**

2 For the reasons discussed above, the Court AWARDS
3 Plaintiffs' attorneys' fees in the amount of \$729,038.64, which
4 reflects the historical prime rate. This amount also includes
5 the award of costs in the amount of \$43,961.23. Additionally,
6 Plaintiffs' remaining claims against defendants Westmark School
7 and Marty Lieberman are hereby DISMISSED.

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9 IT IS SO ORDERED

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12 DATED: 1/4/07

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14 STEPHEN V. WILSON
15 UNITED STATES DISTRICT
16 JUDGE
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